

ORIGINAL

IN THE TENNESSEE COURT OF THE JUDICIARY 10 PM 12: 34

IN RE: THE HONORABLE JOHN A. BELL
JUDGE, GENERAL SESSIONS COURT
COCKE COUNTY, TENNESSEE

APPELLATE COURT CLERK
NASHVILLE

Docket No. M2009-02115-CJ-CJ-CJ

COMPLAINT OF DAVID PLEAU
FILE NO. 08-3508

MOTION TO AMEND COMPLAINT / FORMAL CHARGES

COMES NOW Joseph S. Daniel, Disciplinary Counsel for the Tennessee Court of the Judiciary, pursuant to Rule 15, Tennessee Rules of Civil Procedure, and would move to amend his original complaint (entitled "Formal Charges") as follows:

1. By deleting the following language from Paragraph 6 of the original Formal Charges;...

On December 23, 2008 Judge Bell thereupon entered an order which vacated the previous dismissal and encouraged Mr. Pleau to file a new action against "the other driver" whose name is Jo Ann Coleman. At the suggestion of Judge Bell, David J. Pleau filed a second complaint concerning this automobile accident which was styled David Joseph Pleau vs. Jo Ann Coleman, Docket No. 2008-CV-1186. This complaint was filed October 8, 2008 and states in the civil summons portion of the complaint that it is for "damages done to my vehicle in a judgment rendered in Cocke County Sessions Court on September 18, 2007, Court Number 2007-CV-869."

...and by substituting in its place the following language in said Paragraph 6:

On December 23, 2008 Judge Bell thereupon held a hearing under the auspices of Rule 60, Tennessee Rules of Civil Procedure and presented to the original parties or their counsel the order of June 27, 2008. He did not enter any new or additional order relative to the June 27, 2008

determination and order, which rendered the hearing of December 23, 2008 a nullity. Prior to December 23, 2008, David J. Pleau filed a second complaint concerning this automobile accident which was styled David Joseph Pleau vs. Jo Ann Coleman, Docket No. 2008-CV-1186. This complaint was filed October 8, 2008 and states in the civil summons portion of the complaint that it is for “damages done to my vehicle in a judgment rendered in Cocke County Sessions Court on September 18, 2007, Court Number 2007-CV-869.”

As a result of the proposed amended language herein, the final sentence of Paragraph 11 of the original Formal Charges would of necessity be amended to state “ The call of February 2 was made within weeks of the setting of Mr. Pleau’s second lawsuit against the uninsured motorist and after Judge Bell’s purported Rule 60 hearing on December 23, 2008.”

2. By adding the following language to original Paragraph 8:

Judge Bell in fact engaged Mr. Testerman as his attorney through the periods of time described in this Paragraph and these Formal Charges. While so engaged as attorney for Judge Bell, Mr. Testerman continued to appear as an attorney for parties in Judge Bell’s General Sessions Court of Cocke County. When Mr. Testerman so appeared in Court, at no time did Judge Bell disclose to parties or litigants in whose cases Testerman was involved as counsel the fact that Mr. Testerman was in fact simultaneously representing Judge Bell as an attorney.

3. Original Paragraph 12 C of the Formal Charges would be amended to add at the conclusion of the paragraph, the following language, consistent with language in Count I:

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

4. Original Paragraph 12 C of the Formal Charges would be further amended to add at the new conclusion of the paragraph, the following language:

The conduct of Judge Bell, in not disclosing to parties and litigants in his Court his attorney-client relationship with Thomas V. Testerman further violated the aforesaid Canon 3 in its following provisions:

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so.

3 E. Disqualification

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary. —Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;

F. Remittal of Disqualification. —A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may

participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

5. By amending original Paragraphs 13, 14, and 15 to read as follows, respectively:

13. In addition the conduct of Judge Bell as set forth herein constitutes obstruction of justice, the due and proper administration of justice, and failure to cooperate with a lawful ethics investigation of his conduct.

14. The conduct further constitutes, obstruction or interference with evidence or witnesses.

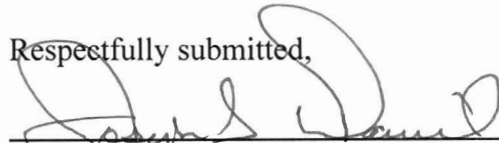
15. The conduct moreover evidences a clear effort to engage in subversion of justice and the operation of the statutory Court of the Judiciary as well as the just and proper administration of the judicial system.

3. By deleting in their entirety original Paragraphs 16 and 17 of the Formal Charges.

4. Due to the deletions of original Paragraphs 16 and 17, by renumbering original Paragraphs 18 and 19 to now be Paragraphs 16 and 17 accordingly.

The proposed Amended Formal Charges would, in the event the Court grants the Motion, read as set forth in Exhibit A to this Motion to Amend.

Respectfully submitted,



JOSEPH S. DANIEL #002799

Disciplinary Counsel

PATRICK J. McHALE, #004643

Assistant Disciplinary Counsel

503 North Maple Street

Murfreesboro, TN 37130

Certificate of Service

I certify that a true and exact copy of the foregoing has been mailed, delivered, and/or transmitted by facsimile to Mr. Gordon Ball, BALL & SCOTT Law Offices, Attorneys at Law, Attorney for The Honorable John A. Bell, 550 W. Main Street, Suite 601, Knoxville, Tennessee 37902, on this the 10th day of February, 2010.

Patrick J. McHale, Assistant Disciplinary Counsel

IN THE TENNESSEE COURT OF THE JUDICIARY

**IN RE: THE HONORABLE JOHN A. BELL
JUDGE, GENERAL SESSIONS COURT
COCKE COUNTY, TENNESSEE**

Docket No. M2009-02115-CJ-CJ-CJ

**COMPLAINT OF DAVID PLEAU
FILE NO. 08-3508**

AMENDED FORMAL CHARGES

Joseph S. Daniel, Disciplinary Counsel for the Tennessee Court of the Judiciary, at the direction of an investigative panel of three judges of the Court of the Judiciary, in accordance with Tenn. Code Ann. § 17-5-304(d)(2)(A), hereby files formal charges against the Honorable John A. Bell, Judge of the General Sessions Court of Cocke County, Tennessee.

Jurisdiction

Following a full investigation authorized under the provisions of Tenn. Code Ann. § 17-5-304(b)(3), the three judge investigative panel composed of the Honorable Christy R. Little, the Honorable David Cook, and the Honorable Kathy McMahan found, pursuant to Tenn. Code Ann. § 17-5-304(d)(2)(A), that there is reasonable cause to believe that the Honorable John A. Bell has committed and continues to commit judicial offenses alleged herein in violation of Tenn. Code Ann. § 17-5-302, and directed disciplinary counsel to file formal charges pursuant to Tenn. Code Ann. § 17-5-304(d)(2)(A).

The Honorable John A. Bell is a full time judge of the General Sessions Court of Cocke County, Tennessee having taken the oath of office on or before September 1, 1998 and the second oath of office on or before September 1, 2006. Therefore, General Sessions Judge A.

Bell is subject to judicial discipline by the Court of the Judiciary pursuant to Tenn. Code Ann. § 17-5-102.

Charges

Disciplinary Counsel charges Honorable John A. Bell as follows:

COUNT I

1. On or about August 9, 2007 David J. Pleau filed a complaint in the General Sessions Court of Cocke County. This complaint was styled David J. Pleau vs. Merastar Insurance Company. This case was assigned docket number 2007-CV-869 and was set for hearing September 18, 2007 at 9:00 a.m. The civil summons which formed the complaint stated that this was a civil action brought by David J. Pleau, “policy #TNA11181953 for failure to pay damages resulting from accident with an uninsured motorist on 12-29-07 under \$5,000.”

2. On September the 18, 2007, this case was heard by the Honorable John A. Bell, General Sessions Judge of Cocke County, and taken under advisement. At the hearing of this case the defendant insurance company was represented by Brad A. Fraser who moved the court to dismiss the complaint as a result of the fact that Mr. Pleau was in this complaint suing directly his own uninsured motorist carrier as opposed to suing the uninsured motorist. Tennessee Code Annotated § 56-7-1206 requires that such a lawsuit be maintained against the uninsured motorist before one may be maintained against the uninsured motorist’s carrier.

3. At the conclusion of the proof Judge Bell announced that he would make his decision in one week. No such decision was made. Subsequent to that “one week,” Mr. Pleau then on more than one occasion asked Judge Bell directly to rule upon the case and was assured by Judge Bell that the decision would be immediately forthcoming.

4. The Honorable John A. Bell thereafter on the June 27, 2008 entered a judgment in favor of the defendant, some nine months after the presentation of the proof and the clear mandate of the law requiring a dismissal of the complaint. The judgment which Judge Bell filed with the clerk reflects a Certificate of Service signed by Joyce S. Clark which indicates that a true and exact copy of the order had been forwarded to counsel for the parties and the unrepresented Mr. Pleau. Neither counsel for the defendant nor Mr. Pleau received a copy of this judgment. Each learned of the decision after all appeal time had expired.

5. The judgment rendered by the Honorable John A. Bell makes findings of fact as to the cause of the underlying automobile collision and the related damages. These findings demonstrate Judge John A. Bell's opinion as to the responsibility for or the cause of the accident as well as the amount of damages and ascribed the negligent conduct to the driver of the "other vehicle." The above described actions and/or inactions of Judge Bell are in violation of the following: (1) Canon 3(B)(8) which requires a judge to dispose of all judicial matters promptly, efficiently and fairly, (2) Canon 2(A) requiring a judge to "respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; (3) Canon 3(B)(2) requiring a judge to be faithful to the law and maintain professional competence in it and requiring a judge not to be swayed by partisan interest, public clamor or fear of criticism."

COUNT II

6. All of the above alleged facts are incorporated by reference. After Judge Bell learned that Mr. Pleau had filed a complaint with the Court of the Judiciary for the untimely resolution of this matter, Judge Bell filed a response denying that he had failed to comply with the above described Canons of Judicial Ethics. When it became obvious that the judgment in question had

never been forwarded to any of the parties as required by law, Judge Bell summoned both parties to his court December 23, 2008 to take up the issue of the Certificate of Service on the original judgment and the fact that it had not been properly served; Judge Bell having the intention to under the auspices of Tennessee Rules of Civil Procedure 60.01 and Tenn. Code Ann. § 16-15-727 amend his June 27, 2008 order. On December 23, 2008 Judge Bell thereupon held a hearing under the auspices of Rule 60, Tennessee Rules of Civil Procedure and presented to the original parties or their counsel the order of June 27, 2008. He did not enter any new or additional order relative to the June 27, 2008 determination and order, which rendered the hearing of December 23, 2008 a nullity. Prior to December 23, 2008, David J. Pleau filed a second complaint concerning this automobile accident which was styled David Joseph Pleau vs. Jo Ann Coleman, Docket No. 2008-CV-1186. This complaint was filed October 8, 2008 and states in the civil summons portion of the complaint that it is for “damages done to my vehicle in a judgment rendered in Cocke County Sessions Court on September 18, 2007, Court Number 2007-CV-869.”

This civil summons was set initially for October 28, 2008 and thereafter continued until it was heard April 24, 2009. After the hearing of this case on April 24, 2009, Judge John A. Bell took the matter under advisement for the purpose of making a finding of fact and the entry of an order. On April 27, 2009 Judge John A. Bell rendered a decision in favor of Mr. Pleau and against Jo Ann Coleman and Merastar Insurance Company which recited identical findings of facts and conclusions of law as to allocation fault and amount of damages as had previously been determined by Judge Bell. On this occasion these findings were made against Jo Ann Coleman who was pro se at these proceedings and was found to be one hundred percent at fault for the collision and a judgment was rendered against her in the sum of \$4,726.78.

7. It is alleged that John Bell was prejudiced against Jo Ann Coleman in the hearing of this matter as he had previously expressed an opinion on the responsibility and damages in this exact controversy. Such conduct as set forth above violated Canon 3B(1) which requires a judge to hear and decide matters assigned to the judge “except for those in which disqualification is required.” This conduct also violates Canon 3E(1)(a) which disqualifies a judge from hearing a case in which he has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceedings.

COUNT III

8. In late January, 2009, or early February, 2009, Judge Bell initiated and upon information and belief, directed a scheme designed to influence the aforementioned Mr. Pleau to dismiss his complaint in the Court of the Judiciary. In furtherance of the scheme, Judge Bell met with a local attorney, a Mr. Testerman in the hallway of the courthouse some time shortly before Monday, February 2, 2009. At that time, Judge Bell enlisted Mr. Testerman, for consideration or considerations unknown, to approach Mr. Pleau on behalf of Judge Bell in a direct and unequivocal effort to induce Mr. Pleau to cease the pursuit of his complaint in the Court of the Judiciary.

Judge Bell in fact engaged Mr. Testerman as his attorney through the periods of time described in this Paragraph and these Formal Charges. While so engaged as attorney for Judge Bell, Mr. Testerman continued to appear as an attorney for parties in Judge Bell’s General Sessions Court of Cocke County. When Mr. Testerman so appeared in Court, at no time did Judge Bell disclose to parties or litigants in whose cases Testerman was involved as counsel the fact that Mr. Testerman was in fact simultaneously representing Judge Bell as an attorney.

9. Mr. Testerman thereafter called Mr. Pleau in an effort to determine if Mr. Pleau was still interested in pursuing his complaint in the Court of the Judiciary and to induce him to drop or dismiss the complaint. The said telephone conversation was initiated by Mr. Testerman to February 2, 2009 to Mr. Pleau's telephone number, and lasted in excess of twenty minutes. During the telephone call, Testerman explained to Pleau that Judge Bell knew that it would be improper for him (Bell) to contact Mr. Pleau directly. Specifically, during this telephone conversation, Mr. Testerman asked Mr. Pleau to come in and sign a document to dismiss his complaint in the Court of the Judiciary against Judge Bell.

10. On March 4, 2009 Mr. Pleau called Testerman to make an appointment to discuss the issue of dropping or dismissing the Court of the Judiciary complaint and a meeting was thereafter held in Testerman's office between Pleau and Testerman on March 20, 2009. As previously stated in Count II, on April 27, 2009, Judge John A. Bell rendered a decision in favor of Mr. Pleau and against Jo Ann Coleman and Merastar Insurance Company which recited the same findings of facts and conclusions of law as had previously been determined by Judge Bell, and as heretofore set form in paragraph 6, herein.

11. On July 16, 2009, Mr. Testerman met with representatives of the Court of the Judiciary Disciplinary office, and at that time a conversation ensued relative to Mr. Testerman's knowledge of Mr. Pleau and how he came to call him on February 2nd and make the request that Mr. Pleau drop his complaint against Judge Bell. During that conversation, Mr. Testerman indicated that he had had a meeting with Judge Bell in the hallway of the courthouse some time shortly before his call on Monday, February 2nd in which he learned of the complaint and that he thereafter called Mr. Pleau in an effort to determine if Mr. Pleau was still interested in pursuing his complaint. The call of February 2 was made within weeks of the setting of Mr. Pleau's

second lawsuit against the uninsured motorist and after Judge Bell's purported Rule 60 hearing on December 23, 2008.

12. The above-described conduct, actions and/or inactions of Judge John A. Bell set forth in Counts I through III, inclusive, constitute multiple violations of law, Tennessee statutes and of the Code of Judicial Conduct, and as such, subject him to the sanctions provided by the provisions of Tenn. Code Ann. § 17-5-301, those violations including violation of the following, in addition to the aforementioned violations heretofore described in Count I and Count II:

A. CANON 1. *A Judge Shall Uphold the Integrity and Independence of the Judiciary*

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.

B. CANON 2. *A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities*

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

C. CANON 3. *A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently*

B. Adjudicative Responsibilities...

(7)...A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that...

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

The conduct of Judge Bell, in not disclosing to parties and litigants in his Court his attorney-client relationship with Thomas V. Testerman further violated the aforesaid Canon 3 in its following provisions:

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so.

3 E. Disqualification

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary. —Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of disputed evidentiary facts concerning the proceeding;

F. Remittal of Disqualification. —A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

13. In addition the conduct of Judge Bell as set forth herein constitutes obstruction of justice, the due and proper administration of justice, and failure to cooperate with a lawful ethics investigation of his conduct.

14. The conduct further constitutes, obstruction or interference with evidence or witnesses.

15. The conduct moreover evidences a clear effort to engage in subversion of justice and the operation of the statutory Court of the Judiciary as well as the just and proper administration of the judicial system.

16. Judge Bell's conduct is a violation of Tenn. Code Ann. § 39-16-402, "Official Misconduct," defined as follows:

(a) A public servant commits an offense who, with intent to obtain a benefit or to harm another, intentionally or knowingly:

(1) Commits an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power;

(2) Commits an act under color of office or employment that exceeds the servant's official power;

(3) Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the public servant's office or employment;

(4) Violates a law relating to the public servant's office or employment; or

(5) Receives any benefit not otherwise authorized by law.

(b) For purposes of subdivision (a)(2), a public servant commits an act under color of office or employment who acts or purports to act in an official capacity or takes advantage of the actual or purported capacity.

(c) It is a defense to prosecution for this offense that the benefit involved was a trivial benefit incidental to personal, professional or business contact, and involved no substantial risk of undermining official impartiality.

(d) An offense under this section is a Class E felony

(e) Charges for official misconduct may be brought only by indictment, presentment or criminal information; provided, that nothing in this section shall deny a person from pursuing other criminal charges by affidavit of complaint.

17. Further, and not by way of limitation, the above-described conduct, actions and/or inactions of Judge John A. Bell, and his multiple violations of statutory law and the Code of Judicial Conduct, subject him to the sanctions provided by the provisions of Tenn. Code Ann. § 17-5-301 including violation of the following statutes:

A. Tenn. Code Ann. § 17-5-302(1) in that the above-described misconduct was and is willful;

B. Tenn. Code Ann. § 17-5-302(2) as a willful or persistent failure to perform the duties of the office;

C. Tenn. Code Ann. § 17-5-302(3) as a violation of the Code of Judicial Conduct as set out in the rules of the supreme court of Tennessee;

D. Tenn. Code Ann. § 17-5-302(4) in the commission of any act constituting a violation of so much of the Tennessee Rules of Professional Conduct as set out in the rules of the supreme court of Tennessee as is applicable to judges;

E. Tenn. Code Ann. § 17-5-302 (5) as a persistent pattern of intemperate, irresponsible or injudicious conduct;

F. Tenn. Code Ann. § 17-5-302(8) in that the conduct was and is calculated to bring the judiciary into public disrepute and adversely affects the administration of justice.

NOTICE

Judge John A. Bell is hereby given written notice of the details of the formal charges brought against him pursuant to Tenn. Code Ann. § 17-5-307(a).

Pursuant to Tenn. Code Ann. § 17-5-307(c), Judge Bell shall have thirty (30) days from and after the date of receipt of these formal charges to file an Answer with the Court by filing the same at the Office of the Clerk of the Court of the Judiciary, 100 Supreme Court Building, 401 Seventh Avenue North, Nashville, Tennessee 37219 and by serving a copy on Disciplinary Counsel at 503 North Maple Street, Murfreesboro, Tennessee 37130. Failure to answer these formal charges shall constitute an admission of the factual allegations which are not answered.

Disciplinary Counsel moves the Court to set this matter for hearing before the Hearing Panel of the Court of the Judiciary at the Cocke County Courthouse in Newport, Tennessee, within sixty (60) days from and after the date the Answer is filed by Judge Bell, as required by Tenn. Code Ann. § 17-5-308(a), or, in the event no Answer is filed, to set the matter within ninety (90) days of the date these formal charges are filed with the Clerk of the Court, in order to comply with the statutory time limit.

This ____ day of March, 2010.

Joseph S. Daniel #002799
Disciplinary Counsel
Tennessee Court of the Judiciary